

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Uwe FIEBIG et al. Examiner: SNYDER, STUART

Serial No.: 10/569,797 Group Art Unit: 1648

Filed: NOVEMBER 20, 2006 Confirmation Number: 6634

Title: **INDUCTION OF ANTIVIRAL NEUTRALIZING ANTIBODIES IN HUMANS AND ANIMALS**

RESPONSE TO RESTRICTION REQUIREMENT

MAIL STOP REPLY
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated January 3, 2008, Applicants hereby elect, with traverse, Group I (claims 1–10, 13–17, and 33–41), drawn to an immunological construct and a pharmaceutical agent.

In response to the election of species Requirement, Applicants hereby elect, with traverse, gp41 (as the envelope protein) and HIV-1 (as the virus).

At page 3 of the open Office Action, the Examiner cites Okeda to allege that “the concept of multiple epitope, viral envelope-derived immungens is not ‘special’ within the context of PCT Rule 13.2.” This contention is respectfully traversed. All the claims in the application involve related subject matter, for example, an immunogenic construct comprising amino acid sequences selected from a viral transmembrane envelope protein of one virus, and compositions comprising the same. It is respectfully submitted that, in view of the totality of the disclosure contained in the instant specification, Applicants’ claims relate to a single inventive concept, as stated under PCT Rule 13.1. Withdrawal of this requirement is respectfully requested.

The requirement for restriction is further traversed insofar as the Office Action

has not demonstrated that an undue searching burden would be required to examine all groups and certainly not to examine at least more than one of the groups. "If search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct invention." (Emphasis added.) See, M.P.E.P. §803.

Although it is believed that a restriction of the original claims is not proper at all in the subject application as discussed above, Applicants respectfully submit that at a minimum, the restriction requirement should be modified to include claims 21, 22, 25, and 29, and claim 31, drawn to a method of *using* the claimed product, with the elected Group I because they comprise overlapping subject matter. "If a product claim is found allowable, process claims that depend from or otherwise require all the limitations of the patentable product *may be rejoined*." See, "Rejoinder" MPEP §806.05. Therefore, a modification to the existing restriction requirement is respectfully requested.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined.

The Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,



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Date: January 28, 2008